IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 758 of 2004
with
CIVIL APPLICATION NO. 2634 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VAPI NAGAR PALIKA (VAPI BOROUGH MUNICIPALITY)
Versus
ROHIT RAMANLAL SHAH

Appearance:
NANAVATY ADVOCATES for appellants/applicants
MR DC DAVE for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 02/04/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

Admit. Learned Counsel Mr.Dave waives service of notice for opponent.

2. With the consent of the learned Counsel, this appeal is taken up for hearing today.

3. The appellants (original defendants Nos.1 and 2) have challenged the judgment and decree dated 11.8.2003 passed by the learned Civil Judge (SD), Valsad in Special Civil Suit No. 220 of 1999, allowing the suit filed by the respondent, by granting decree in sum of Rs.2,96,781/- with interest at the rate of 18% p.a. with proportionate cost.

4. Learned Counsel appearing for the appellants, after inviting our attention to the impugned judgment, submits that the learned Judge was not justified in passing the impugned judgment merely because no written statement was filed by the appellants. In the submission of the learned Counsel, even in a situation where no written statement is filed, the Court is required to apply its mind to the facts and pass a reasoned order. We see no merits in the submission. In view of the amended provision of Order 8 Rule 1 of CPC, the defendant is required to file the written statement within 30 days from the date of service of summons. The proviso to Rule 1 of Order 8 provides that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than 90 days from the date of service of summons. In the instant case, admittedly, the written statement is not filed within 30 days from the date of service of summons. From the record, it appears that the appellants filed application Exh.38 seeking time to file the written statement which was rejected on 2.4.2003 and thereafter also, no written statement is filed. Under the circumstances, the trial Court was justified in passing the impugned judgment and decree on 11.8.2003, by invoking Rule 10 of Order 8.

5. From the facts on record it appears that the appellants being a local body, was totally careless in not presenting the written statement and to defend its cause. The casual approach on the part of the local body is totally unjustifiable and uncalled for. With a view to see to it that the interest of the public body is not jeopardised, we suggested to learned Counsel Mr.Dave appearing for the opponent that cause of the appellant

may not go in vain and, instead let there be a decision on merits. Learned Counsel Mr.Dave has responded positively to our suggestion. Thus, considering the facts and circumstances of the case, and following the decision of the apex Court in Kajaria Iron Castings Ltd. vs. Aswinkumar More (2000) 10 SCC 292, we pass order as under:

The impugned judgment and decree dated 11.8.2003 passed by the trial Court is set aside. The matter is remanded to the trial Court to have a decision on merits on the fulfillment of the following conditions:

The appellants shall file the written statement on or before 3rd May 2004. The appellants shall deposit Rs.2,96,781/- with interest at the rate of 18% from the date of suit till deposit before the trial Court on or before 3rd May 2004. On such amount being deposited, the opponent will be at liberty to withdraw the same on furnishing security to the satisfaction of the trial Court. The withdrawal of the amount shall be subject to the decision of the suit. The trial Court shall hear and decide the suit afresh on merits in accordance with law. The appeal is accordingly allowed, with no order as to costs.

In view of the order passed in the main appeal, no orders are required to be passed in the Civil Application for stay and the same stands disposed of.

(Kshitij R. Vyas, J.)

(K.S. Jhaveri, J.)

Sreeram.